

HOUSE OF REPRESENTATIVES

HEARINGS

BEFORE THE COMMITTEE

on

STANDARDS OF OFFICIAL CONDUCT

PENDING BUSINESS

Tuesday, September 21, 1976

Washington, D. C.

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House of Representatives,

Committee on Standards of
Official Conduct,

Washington, D. C.

The committee met, pursuant to notice, at 10:05 a.m.,
in Room H-310, The Capitol, Honorable John J. Flynt, Jr.
(chairman of the committee) presiding.

Present: Representatives Flynt, Price, Hebert, Foley,
Bennett, Spence, Quillen, Hutchinson, Quie, Mitchell, and
Cochran.

Also present: John W. Swanner, Staff Director; Jay Jaffe,
Assistant to the Staff Director; John Marshall, Legal Counsel;
David Bowers, Investigator; Andrew Whalen, Staff Counsel; Miss
Jan Loughry, Staff Counsel; and Miss Nancy Otis, Clerk.

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1 Mr. Flynt. The committee will please come to order.
2 The Staff Director will please call the roll.
3 Mr. Swanner. Mr. Flynt?
4 Mr. Flynt. Here.
5 Mr. Swanner. Mr. Spence?
6 Mr. Spence. Here.
7 Mr. Swanner. Mr. Price?
8 (No response.)
9 Mr. Swanner. Mr. Quillen?
10 Mr. Quillen. Here.
11 Mr. Swanner. Mr. Teague?
12 (No response.)
13 Mr. Swanner. Mr. Hutchinson?
14 (No response.)
15 Mr. Swanner. Mr. Hebert?
16 (No response.)
17 Mr. Swanner. Mr. Quie?
18 (No response.)
19 Mr. Swanner. Mr. Foley?
20 Mr. Foley. Present.
21 Mr. Swanner. Mr. Mitchell?
22 Mr. Mitchell. Here.
23 Mr. Swanner. Mr. Bennett?
24 Mr. Bennett. Here.
25 Mr. Swanner. Mr. Cochran?

1 Mr. Cochran. Here.

2 Mr. Swanner. Mr. Chairman, seven Members answer present;
3 five Members absent, not voting.

4 Mr. Flynt. On this roll call to ascertain the presence of
5 a quorum, seven Members, a quorum is present.

6 Will you mark Mr. Hutchinson present? Eight Members are
7 present.

8 Does the gentleman from Tennessee seek recognition?

9 Mr. Quillen. Yes, Mr. Chairman. I move pursuant to
10 House Rule XI 2(g)(1) that further proceedings of this commit-
11 tee meeting be closed to the public today.

12 Mr. Flynt. You have heard the motion.

13 Mr. Bennett. I would like to have it discussed.

14 Mr. Flynt. I would like for counsel to advise the commit-
15 tee on this point at this time, and then, of course, I will
16 recognize any Members who desire recognition.

17 Mr. Marshall. Mr. Chairman, in my judgment, the committee
18 will be considering actions today which, under the Rules of the
19 House, the committee should at least initially consider in
20 Executive Session. Among the matters which the committee may
21 wish to consider will be a decision as to whether certain
22 proceedings should be begun under 2 U.S.C. 192 through 194.
23 It will be considering other matters as to whether some other
24 action should be initiated under the Rules of the House and under
25 the laws of the country. In view of that, and in view of the

1 need for the committee to obtain advice of counsel on that,
2 and in order for the committee to further weigh all of the
3 evidence so it may make a decision based on all the evidence,
4 it is my judgment and legal advice to the committee that the
5 committee should consider these matters initially in Executive
6 Session.

7 Should the committee decide later it wants the committee
8 public, the committee has that right under the Rules of the
9 House of Representatives.

10 Mr. Flynt. Mr. Bennett.

11 Mr. Bennett. Well, I am not really very much at ease
12 with the rule we have to live by which says anything that comes
13 up negative, we have to go into secret session, but I realize
14 we don't control this. In other words, that is a rule binding
15 on the committees and is not waivable. Therefore, we have
16 to do that, and we have done that most of the meetings.

17 It seems to me like this is purely a procedural matter
18 today to decide whether or not we are going to cite contempt
19 in the Schorr case, and it doesn't strike me that is going
20 to reveal anything that is violative of that rule. There is
21 nothing about Mr. Schorr that is not completely public. He
22 has never said anything in Executive Session, I don't believe,
23 has he? It has all been open, so how can there be something
24 violative of that rule?

25 Mr. Marshall. To respond, in the event the committee

1 determines that it wishes to take up the failure of any wit-
2 ness to answer a question and to make recommendations to the
3 House of Representatives concerning that failure, this would
4 basically be a procedure under 2 U.S.C. 192 through 194. This
5 defines that a willful failure to answer a pertinent inquiry
6 by a duly authorized committee constitutes a misdemeanor.
7 Therefore, the committee would be determining whether it
8 wishes to initiate certain steps under this code, and that is
9 accuse someone or make a recommendation about whether a person
10 is guilty of a misdemeanor. This kind of deliberation must
11 be in Executive Session for the protection of the person or
12 persons involved.

13 Mr. Bennett. In view of what you have said, you have
14 said to handle this matter we have to at least consider a statute
15 which has to do with a criminal matter, and therefore it falls
16 right in the teeth of the rule by which this committee is com-
17 pelled to comply, really. That is what you are saying, isn't
18 it?

19 Mr. Marshall. I am saying for the protection of the per-
20 sons involved, so that the committee will simply not make de-
21 liberations without those deliberations at least being initially
22 in Executive Session. Should the committee wish to publish
23 those later, the committee might consider that, too.

24 Mr. Flynt. If the gentleman would yield; or to go from
25 Executive Session into public session at any time during the

1 proceedings that the committee feels that it should.

2 Mr. Bennett. Yes, I must say in view of what the attorney
3 has said, we probably would be violating this rule. I do
4 think if we ever get any time to revise that rule, it might be
5 a good idea, because it seems to me that it is making us
6 appear to desire to be secret when there really isn't any real
7 desire to be secret. It doesn't really serve a useful pur-
8 pose, and I think the rule should be amended.

9 We have to live by the rule, since we can't amend it, but
10 I am saying it is something that should be given some thought
11 in the future.

12 Mr. Flynt. Thank you, Mr. Bennett.

13 Mr. Mitchell. Mr. Chairman, I think everyone on the
14 committee likes the concept of openness, and we have all sup-
15 ported that type of legislation, I am sure, on the Floor. But
16 it is my understanding, and I would like to have one of our
17 counsels research this, that this rule was adopted as a result
18 of the abuses of the McCarthy hearings. Many innocent people
19 were defamed and degraded and reputations were ruined and
20 surely this committee doesn't want to participate in that type
21 of situation.

22 So I think it is a good rule and maybe it can be modified,
23 but there is great likelihood we can defame and degrade, and-
24 we don't wish to do that.

25 Mr. Flynt. Mr. Spence.

1 Mr. Spence. If Mr. Bennett would yield.

2 Mr. Flynt. Are you through, Mr. Mitchell?

3 Mr. Mitchell. Yes, sir.

4 Mr. Flynt. I recognize Mr. Spence.

5 Mr. Spence. I was going to add, if it would contribute
6 anything, we will be talking today, of course, about people
7 other than Mr. Schorr, very possibly the people who were wit-
8 nesses last week, and certainly things will be brought out that
9 might tend to cast reflection on other people, and if I could,
10 while I still have the time, I don't know if everyone saw the
11 news article in the Post this morning about the Senate intelli-
12 gence panel approving strict rules on secrecy.

13 I think this has a lot of bearing on our deliberations
14 from the standpoint of our report, possibly, and what we are
15 talking about here, because here is a committee after, I am
16 sure, thorough consideration of the matter and what has gone on
17 in both Houses from the standpoint of these so-called intelli-
18 gence committees, they have adopted very strict rules, and I
19 would like to put this article, if I might, Mr. Chairman, into
20 the record, because it could help us very much, I think, in our
21 consideration of what we might recommend in our report to the
22 full House.

23 Mr. Flynt. Without objection, the article will be in-
24 cluded at this point in the record.

25 (The article referred to follows:)

1 Mr. Spence. If I can just read one paragraph, "The Senate
2 Select Committee on Intelligence has adopted secrecy rules so
3 strict that they prohibit members from passing on to other
4 senators, even by way of summary, non-classified information
5 without the specific approval of a majority of its members."

6 This goes beyond what we have heretofore experienced in
7 secrecy rules, and I think they are facing up to the fact in
8 this country you do have to have, as one person put it the
9 other day, secrets, and I think most people agree.

10 Mr. Foley. Mr. Chairman, reserving the right to object,
11 and I will not object, I am not sure I see the relevance of
12 this particular report to the proceedings this morning, but I
13 have no objection to including it in the record.

14 Mr. Flynt. Mr. Foley.

15 Mr. Foley. Mr. Chairman, I have some reluctant disagree-
16 ment with the distinguished counsel of the committee. It seems
17 to me that insofar as the committee may be considering this
18 morning any possible recommendations resulting from the refusal
19 of any witnesses to testify or produce documents before the
20 committee, that those deliberations and any possible action
21 should take place in public session. It seems to me that the
22 spirit of this particular rule is to prevent testimony of wit-
23 nesses concerning the activities of persons that if released
24 would incriminate, defame, or otherwise degrade their
25 reputations and witnesses that last appeared before the committee

1 testified and in some cases refused to answer questions in
2 open session, and the whole matter has been discussed widely in
3 the press, and it doesn't seem to me that any procedural motions
4 or action taken by the committee could possibly work to the dis-
5 advantage of any of those witnesses.

6 Since, as far as I know, we are not going to receive any
7 testimony today that would touch upon their conduct that isn't
8 already widely known, I see no reason to close the proceedings,
9 at least on those particular issues.

10 Now, if the committee discusses other persons or other
11 testimony that was received in Executive Session, there may be
12 a valid purpose in invoking the rule, but at least so far as
13 the witnesses are concerned, the questions of their compliance
14 or non-compliance with the subpoenas or any action taken with
15 respect to their testimony or failure to produce documents,
16 that it seems to me to have been conducted in open session and
17 the activities of this committee should also be in open session.

18 Thank you, Mr. Chairman.

19 Mr. Flynt. Thank you, Mr. Foley.

20 Do you withdraw your reservation or objection to the
21 unanimous consent request?

22 Mr. Foley. I did so.

23 Mr. Flynt. Mr. Cochran.

24 Mr. Cochran. I have no comment, Mr. Chairman. I am ready
25 to vote on the motion.

1 Mr. Flynt. Is there further discussion on the motion of
2 the gentleman from Tennessee?

3 This is a motion which, under the Rules of the House, must
4 be made in public session with a quorum of the committee pres-
5 ent. Further, under the Rules of the House, this vote must
6 be taken by record vote.

7 Mr. Quie. Mr. Chairman, is this the motion that we go
8 into Executive Session?

9 Mr. Flynt. Yes.

10 The Staff Director will call the roll.

11 Mr. Swanner. Mr. Flynt?

12 Mr. Flynt. Aye.

13 Mr. Swanner. Mr. Spence?

14 Mr. Spence. Aye.

15 Mr. Swanner. Mr. Price?

16 (No response.)

17 Mr. Swanner. Mr. Quillen?

18 Mr. Quillen. Aye.

19 Mr. Swanner. Mr. Teague?

20 (No response.)

21 Mr. Swanner. Mr. Hutchinson?

22 Mr. Hutchinson. Aye.

23 Mr. Swanner. Mr. Hebert?

24 (No response.)

25 Mr. Swanner. Mr. Quie?

1 Mr. Quie. No.

2 Mr. Swanner. Mr. Foley?

3 Mr. Foley. No.

4 Mr. Swanner. Mr. Mitchell?

5 Mr. Mitchell. Aye.

6 Mr. Swanner. Mr. Bennett.

7 Mr. Bennett. No.

8 Mr. Swanner. Mr. Cochran?

9 Mr. Cochran. Aye.

10 Mr. Swanner. Mr. Chairman, six Members answer aye; three
11 Members answer no; three Members absent, not voting.

12 Mr. Flynt. On this vote, by roll call, the ayes are six;
13 the nays are three, three Members not voting. A majority of
14 a quorum having voted in the affirmative, accordingly, the
15 motion prevails and following the announcement which the Chair
16 is about to make, the committee will go into Executive Session.

17 The Ranking Minority Member, Mr. Spence and I, have dis-
18 cussed both the substantive matters to be taken up in Executive
19 Session today and also the procedural matters. There are
20 matters other than matters of procedure alone which will be opened
21 up and gone into.

22 At this point in time, we have no idea whether the Executive
23 Session part of today's meeting will last most of the day or
24 whether it can be concluded in about an hour and a half. As I
25 say, there are many things which counsel desired to bring to the

1 attention of the committee in addition to the one matter of
2 procedure which has been discussed. I want to emphasize that
3 the procedural matter is not the only thing to come before the
4 committee today.

5 It is now approximately 10:20. At the risk of going
6 into public session in a much shorter time, the Chair is
7 presently of the opinion and makes this statement so that those
8 present may be guided thereby; the Chair does not anticipate
9 that we will go into public session for at least an hour and
10 forty minutes. I make that statement to give you some idea so
11 that you can make your plans for the remainder of the morning.

12 If we do go back into public session, I am sure that Mr.
13 Jaffe has some way that he can advise the respective gatherers
14 and you will be so advised.

15 But pursuant to the roll call vote just taken, the commit-
16 tee now resolves itself into Executive Session.

17 (Whereupon, at 10:20 a.m., the committee proceeded into
18 Executive Session.)

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1 (The committee proceeded into open session at 12:08 p.m.)

2 Mr. Flynt. The committee will please come to order. The
3 committee is in public session.

4 The Chair would like to state that at the time that the
5 committee went into Executive Session the Chair was hopeful
6 that motions could be made, adequately discussed, and voted on
7 at a time to be agreed upon.

8 At one point in time, the committee tentatively agreed to
9 begin voting at 11:50, but by unanimous consent of the commit-
10 tee, with eleven members present, that tentative agreement to
11 begin voting at 11:50 was vacated, and I now recognize the
12 gentleman from Washington for the purpose of making a statement
13 and for the purpose of making a motion following such state-
14 ment if he so desires.

15 Mr. Foley. Mr. Chairman, first of all, I want to say that
16 I was under some misunderstanding when the original vote to go
17 into Executive Session was taken, and it was my understanding
18 that the motion would be made under the Rules of the House which
19 require Executive Sessions when any witness testifies which may
20 tend to defame, degrade or incriminate any person.

21 The record having indicated that the motion was made
22 in general according to committee rules for Executive Sessions,
23 I want to state for the record my misunderstanding of the
24 motion at the time.

25 Secondly, I would like to state that the Chairman and the

1 members of the committee, particularly the Chairman, has been
2 fully cooperative in an effort for careful consideration of any
3 matters that relate to the possibility of action by the commit-
4 tee with respect to the conduct of any witness before the com-
5 mittee, particularly at a public session on September 15, 1976,
6 and I feel that the Chairman and the committee are desirous of
7 most careful deliberation on that subject or any motions that
8 might be made thereunder. Mr. Chairman, I accordingly move --

9 Mr. Flynt. Would the gentleman yield to me for a ques-
10 tion?

11 Mr. Foley. Yes.

12 Mr. Flynt. Is the thrust of the gentleman's statement
13 to the effect that even though we have had substantial discus-
14 sion of this, that if the committee approves your motion, that
15 the committee feels that it has not adequately discussed it be-
16 fore voting?

17 Mr. Foley. That is my judgment, Mr. Chairman.

18 Mr. Flynt. I would like to inquire if that is the judgment
19 of other members of the committee as well.

20 Mr. Bennett. There were other motions, too?

21 Mr. Flynt. As far as I know, no motion has been made.

22 Mr. Bennett. I mean discussion.

23 Mr. Flynt. We have discussed.

24 Mr. Bennett. You used the word motion.

25 Mr. Flynt. I was talking about the motion of the gentleman

1 from Washington which he is going to make in just a minute.
2 That is the motion to which I have reference. Because while we
3 discussed certain motions, let me say that the Chair was con-
4 tinuing to, at one time, press for the motions to be made and
5 voted on preferably in open session, but as the artificial
6 deadline of 11:50 approached and we saw we could not do it with
7 matters still pending on which members of the committee desired
8 further discussion, the motions were never actually made in
9 due and proper form.

10 Thank you for yielding, Mr. Foley.

11 Mr. Foley. Mr. Chairman, I move that further deliberation
12 by the committee on any matters relating to possible motions
13 or their adoption touching upon the conduct of certain witnesses
14 called before this committee in public session on September 15,
15 1976, be deferred until the meeting to be called by the
16 Chairman of this committee for ten a.m. tomorrow, September 22,
17 1976, in this room.

18 Mr. Flynt. You have heard the motion.

19 Mr. Quie. Mr. Chairman.

20 Mr. Flynt. I recognize Mr. Quie.

21 Mr. Quie. I would just ask that anyone who is going to
22 make such a motion have the motion in writing and available
23 for all the members to read at the time we do so vote.

24 Mr. Flynt. I would certainly concur in that as a sugges-
25 tion.

1 Mr. Quie. As a suggestion.

2 Mr. Flynt. But I would not, in a meeting today, want to
3 bind members, to restrict them from making motions which they
4 had not put into writing.

5 Mr. Quie. My suggestion is only a suggestion.

6 Mr. Flynt. I think the suggestion is great; I do.

7 Is there further discussion?

8 The question is on the motion of the gentleman from
9 Washington, Mr. Foley, that the committee take no further
10 action on this matter until tomorrow morning at ten o'clock, and
11 the Chairman be directed to call a meeting for 10:00 a.m.
12 Wednesday, September 22, 1976, in Room H-310.

13 As many as favor the motion will indicate by a show of
14 hands.

15 As many as oppose the motion will indicate by a show of
16 hands.

17 On this vote by division the ayes are eleven; the nays are
18 none. The Chair hereby gives oral notice to be confirmed by
19 written notice that this committee will reconvene in this room
20 at ten o'clock tomorrow morning, Wednesday, September 22, 1976.

21 Do I hear a motion the committee adjourn?

22 Mr. Bennett. So move.

23 Mr. Flynt. Without objection, the committee stands
24 adjourned until tomorrow morning at ten o'clock.

25 (Whereupon, at 12:15 p.m., the committee adjourned, to
reconvene at 10:00 a.m., Wednesday, September 22, 1976.)